
IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an application under Article 17
and 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC FR Application No.

1. Centre for Environmental Justice
(Guarantee) Limited,
No. 20/A, Kuruppu Road, Colombo 08.
2. Withanage Don Hemantha Ranjith Sisira
Kumara,
Director and Senior Advisor,
Centre for Environmental Justice,
No. 20A, Kuruppu Road, Colombo 08.
3. Pathragoda Kankanamge Dilena,
Executive Director,
Centre for Environmental Justice,
20 A, Kuruppu Road, Colombo 08.

PETITIONERS

Vs

1. Wimalaweera Dissanayake,
Hon. State Minister of Wildlife Protection,
Adoption of Safety Measures including the
Construction of Electrical Fences and
Trenches, and Reforestation and Forest
Resource Development.
“Sobadam Piyasa”, 5th Floor,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
2. Chandana Sooriyabandara,
Director General of Wildlife Conservation,
Department of Wildlife Conservation,
No. 811A, Jayanthipura,
Battaramulla.

3. Central Environmental Authority
No.104, Denzil Kobbekaduwa Mw,
Battaramulla.

3A. Hemantha Jayasinghe,
Director General,
Central Environmental Authority
No.104, Denzil Kobbekaduwa Mw,
Battaramulla.

4. Geological Survey and Mines Bureau,
569, Epitamulla Road, Pitakotte.

4A. Sajjana De Silva Director General
Geological Survey and Mines Bureau,
569, Epitamulla Road, Pitakotte.

5. K. M. A Bandara,
Conservator General of Forests
Department of Forest Conservation
Sampathpaya, No.82,
Rajamalwatte Road,
Sri Jayawardenepura Kotte.

6. Inspector General of Police,
Police Headquarters
Colombo 01.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

On this 14th day of February 2022

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND
LADYSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME
COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

The **PETITION** of the Petitioners above named appearing by Ms.H.S.H.Premasiri their
Registered Attorney-at-Law states as follows;

THE PETITIONERS

1. The 1st **Petitioner** is a body incorporated under the laws of Sri Lanka as a Company Limited by Guarantee and may sue and be sued in such name.

*True copies of the Memorandum and Articles of Association and Certificate of Incorporation of the Petitioner are annexed to the Petition marked **“P1(a)”**, **“P1(b)”**, **“P1(c)”**, respectively and pleaded as part and parcel hereof.*

2. The 1st Petitioner is a non-profit making public organization having *inter-alia* as its objectives the protection, preservation, conservation of nature and environment, promotion and advancement of the concepts of environmental justice and good governance in the interest of the general public, to safeguard the riches of the environment and further the interests, rights, and privileges of the people by affording the paramount consideration towards the governing laws of the country.
3. The 1st Petitioner is and continues to be, genuinely concerned with the implementation and enforcement of the laws relating to the protection of nature and environment and in performing the fundamental duty cast on every person under **Article 28(f) of the Constitution of the Republic** to protect nature and conserve its riches. The 1st Petitioner being a social conscience legal entity, had been at the forefront of the people's struggle to protect and preserve nature and the environment for the present and future generation and in its capacity has invoked the jurisdiction of Your Lordships' Court and other Courts on several matters relating to the environment and has obtained relief in pursuance of its aims.
4. The Petitioners state that the objectives of the 1st Petitioner Company are to safeguard the riches of the environment and furtherance the interests, rights and privileges of the people by affording the paramount consideration towards the governing laws of the country.

*A brief note describing the 1st Petitioner's contribution towards the protection of the environment particularly through constitutional remedies is annexed to the Petition marked as **“P2”** and pleaded part and parcel hereof.*

5. The 2nd Petitioner above named is a Biological Science Graduate from the University of Kelaniya in 1985. He held positions as the Environmental Officer, Senior Environmental Scientist, and the Executive Director at the Environmental Foundation Ltd from 1990 to 2003 and co-founded the Centre for Environmental Justice in 2004. He was an Executive Committee member of the Friends of the Earth International (2010-2018), is the incumbent chairman of the Friends of the Earth International and an International Committee Member of the NGO Forum on Asian Development Bank. He had instituted several cases over the years aimed at protecting the environment of the island.

*A list of cases instituted by the 2nd Petitioner for the protection of the environment is annexed to the Petition marked “**P3**” and pleaded as part and parcel hereof.*

6. The 3rd **Petitioner** above-named is a B. SC. Management (Special) Graduate from the University of Sri Jayawardenapura. He held positions such as the Head of the Policy and Advocacy at the Environmental Foundation Ltd from 2000 to 2003 and co-founded the Centre for Environmental Justice in 2004. He had contributed to a number of cases over the years aimed at protecting the environment of the island.
7. The Petitioners being citizens of the country and stakeholders of the welfare of the country in view of their citizenry are filing this application both on their account and also beg the leave of Your Lordships' Court to plead this application “**in the public interest**” on behalf of the general public, like-minded citizenry and the future generations, particularly, *inter alia*, to ensure due compliance with environmental protection laws, regulations, and procedures, and to ensure the performance of the Respondents' entrusted duties and obligations thereto, as contemplated in **Articles 27(14), 28(d) and 28(f) of the Constitution of this Republic**, for and on behalf of the citizenry of this Republic upon whom all such powers of government are absolutely and inalienably vested by virtue of their sovereign entitlement.

THE RESPONDENTS

8. The Petitioners state that:
 - a) the 1st **Respondent** is the Hon. State Minister of Wildlife Protection, Adoption of Safety Measures including the Construction of Electrical Fences and Trenches, and Reforestation and Forest Resource Development;

- b) the **2nd Respondent** is the public officer holding the statutory post of Director General of Department of Wildlife Conservation (DWC) under the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended (hereinafter referred to as the "FFPO") and is mandated to give effect to the provisions of the same in relation to the protection of all wildlife and the Protected Areas declared under the said Ordinance;
- c) the **3rd Respondent** is the Central Environmental Authority (hereinafter referred to as the "CEA") statutorily constituted under the National Environmental Act No. 47 of 1980 as amended (hereinafter referred to as the "NEA") and the 3A Respondent abovenamed is the public officer holding the statutory post of Director-General of the Central Environmental Authority. The public duties of the 3rd and 3A Respondents constitute the implementation and administration of the NEA, especially of the provisions of Sections 10, 17, 20 and provisions of Part IV C of the NEA and National Environmental (Procedure for approval of projects) Regulations No. 1 of 1993 as amended and published in Extraordinary Gazette No. 772/22 dated 24th June 1993;
- d) the **4th Respondent** is the Geological Survey and Mines Bureau (GSMB), a body corporate established by the Mines and Minerals Act, No. 33 of 1992 as amended by Mines and Minerals (Amendment) Act No.66 of 2009 *inter alia* to regulate the country's mining and mining related activities and **4A Respondent** is Director General of the said Authority. The 4th and 4A Respondents are duty bound to give effect to the provisions of Section 28, 33, 61A, 63 of the Mines and Minerals Act;
- e) the **5th Respondent** is the public officer holding the statutory post of Conservator General of Forests under the Forest Ordinance No. 16 of 1907 and is mandated to give effect to the provisions of the same in relation to the protection of the protected areas declared under the Ordinance, including Other State Forests described in Section 20 of the said Act;
- f) the **6th Respondent** is the Inspector General of Police and is duty bound to give effect to some of the provisions of Section 66(1) of the Fauna and Flora Protection Ordinance, Section 49 of the Forest Ordinance, Section 63A Mines and Minerals Act, under IGP Circulars issued in connection with the National Environment Act and the Penal Code;

g) the **7th Respondent** is Hon. Attorney General of the Republic and has been made a party to this application *inter alia* to give notice of this Application.

9. The Petitioners further state that the impugned actions and omissions and intended activities complained of, on the part of one or more of the Respondents named above in the instant application, constitute “administrative and executive action” within the meaning of Article 17 and Article 126 of the Constitution of the said Republic.

INTRODUCTION

10. Petitioners state that the State Minister of Wildlife Protection, Adoption of safety measures including the construction of electric fences and trenches and reforestation and forest resource development and the Director General of Wildlife has initiated a new project which involved the digging of trenches in several areas in the country including around the Protected Areas declared under the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended, citing it as a strategy to mitigate the Human-Elephant conflict (HEC) without citing any valid basis or expert recommendations
11. Petitioners state that the 1st and the 2nd Respondents had informed the media that such trenches would act as alternative barriers which could prevent elephants from entering villages. The DWC along with the 1st respondent, has granted permission for the digging of trenches in many areas. Accordingly, digging of trenches has already begun covering kilometres within reserves and sanctuaries and also within one mile radius buffer zones of such protected areas.
12. Petitioners further state that the DWC has recommended digging trenches with a width of 15 feet on the top and 10 feet width at the bottom, with an inclination. However, it is reported that certain contractors have been forced by a personal staff member of State Minister to dig trenches of 10 feet width from top to bottom.
13. Petitioners further state that there is no feasibility study conducted or obtained expert opinion or not conducted an Environmental Impact Assessment prior to digging these trenches.

NATIONAL ACTION PLAN FOR HEC MITIGATION-2020

14. Petitioners state that a Presidential Committee was set up at the behest of His Excellency the President in August 2020 and was chaired by well-known local and international wild elephant expert Dr. Prithiviraj Fernando who is, perhaps, the most experienced researcher on HEC mitigation and elephant conservation among the 13 Asian Elephant Range States and also comprised of vital stakeholders including the DWC and other experts. The Presidential Committee was mandated to develop a 'National Action Plan for HEC Mitigation' (the Action Plan).
15. Petitioners state that the Action Plan had been presented to His Excellency the President in December 2020.

A copy of the National Action Plan for HEC Mitigation is annexed hereto marked **"P4"** and pleaded as part and parcel hereof.

16. The said Action Plan *inter alia* states as follows with regard to Trenches;

"The biggest problem with trenches is that they fill up with water when it rains, and the sides cave in. Elephants will also put weight on the sides of trenches and actively break them down. Elephants can also go down and clamber up very steep gradients by sliding down on their backs and using their knees to climb up. Lining trenches with concrete can stabilize the sides and prevent the sides caving in."

"Trench construction over long distances is difficult because of variation in soil conditions, presence of rocky substrate etc. Trenches may also obstruct the drainage of surface water, leading to issues with irrigation. Additionally, it is not possible to construct trenches across roadways, waterways etc. Elephants will cross through any gaps left in a trench system, negating the effectiveness of trenches. Trenches will also obstruct the movement of other animals, hence, have a wider impact than just on elephants."

"Trenches have been tried in combination with DWC electric fences at the Pelwatte Sugar and the Lunugamvehera National Park in the south and Kathnoruwa in the

northwest **but proved ineffective.** Private landowners in the Puttlam area have tried trenches by themselves as a barrier but without success.” (*Emphasis added*)

17. Petitioners state that the past experience in Sri Lanka with trenches as a barrier for HEC has shown to be ineffective, and the Action Plan of the Presidential Committee reinforces these views. However, in drastic contrast to the Action Plan that a multi-stakeholder Presidential Committee prepared, the State Ministry and the DWC are going ahead with an HEC mitigation measure that the Action Plan identifies as being ineffective.
18. Petitioners further state that the digging of trenches has already commenced in some protected areas such as Udawalawa National Park Lunugamwehera National Park with plans for trenches to be dug around other PAs and along electric fence lines, without any feasibility study, EIA, Climate Impact Assessment, Archeological Impact Assessment or recommendations by the relevant experts.

ADVERSE EFFECTS OF TRENCHES

19. Petitioners state that the adverse effects of trenches *inter alia* includes –
- a) trenches in wildlife landscapes impede the movement of all wildlife;
 - b) Elephants fall into deep and narrow trenches will face severe injuries, including death;
 - c) smaller animals can fall into the trenches, be severely injured, die and poachers can easily hunt small animals falling into trenches ;
 - d) impacting on rainwater runoff, there could be unforeseen hydrological impacts, including diversion of streams, which will have impacts on the local farmers and village communities and flooding of low lying lands due to flash floods;
 - e) impact the cascaded tank systems and springs, including climate adaptation-related impacts;
 - f) during the monsoon season, either side of the trench will cave in and get filled with soil;
 - g) destroy or divide the habitats of species, including some rare or endangered species; and
 - h) restricts the free movement of the public and risk of infants falling into these trenches and being serious injured; and
 - i) the indigenous people who cohabits with the environments and survives on the natural produces will also be affected due to the fragmentation of their habitats.

20. Petitioners state that the surrounding environment and sensitive ecosystems are also destroyed by the heavy machinery used to dig trenches and vehicles used to transport sand. Furthermore, such trenches do not suit a country like Sri Lanka affected by two monsoon seasons.
21. Petitioners state that according to the Global Climate index Sri Lanka was ranked as No. 02 in 2019 and No 6 in 2020, showing how Sri Lanka is vulnerable to climate change. Therefore unplanned major excavations such as these trenches around the wildlife and forest areas may have very significant adverse social, environmental and economic impacts.
22. Petitioners further state that elephants are not confined to DWCs protected areas, and almost 70 per cent of elephants in Sri Lanka live outside the protected areas, creating a natural arena for intense human-elephant conflict that annually kills more than 350 elephants and almost 200 people.
23. Generally, when elephants invade villages in the outskirts of protected areas, the villagers and the officials of the DWC chase such elephants into such protected area(s), and digging trenches would make it impossible to chase the elephants back to protected areas and they will be confined to populated areas. Hence, more harm would be caused to the villages due to elephant attacks, thus violating their fundamental rights guaranteed under Article 12(1) of the Constitution.
24. Petitioners annexes hereto photographs depicting the excavated trenches in several areas around the country, is annexed hereto marked **“P5(a)”** to **“P5(g)”** and pleaded as part and parcel hereof.
25. Petitioners further state that in some areas these trenches are dug across the lands of farmers despite the objections raised by the owners of such lands. It is reinforced by the letter dated 2022.02.01 issued by the Mahaweli Authority of Sri Lanka addressing the Assistant Director of the Department of Wildlife, with regard to the complaints raised by some famers.

A copy of the said letter dated 2022.02.01 is annexed hereto marked **“P6”** and pleaded as part and parcel hereof.

26. Petitioners state that this has gravely prejudiced the farmers and give rise to an imminent threat of violation of the fundamental rights/continuous violation of the fundamental rights of the farmers guaranteed to them under Article 14(1) (g) of the Constitution.

FAILURE TO CONDUCT AN ENVIRONMENTAL IMPACT ASSESSMENT AND OTHER STATUTORY VIOLATIONS

27. Petitioners state that as per statutory framework set out in Part IV C of the National Environmental Act and the procedure set out in the **National Environmental (Procedure for approval of projects) Regulations No. 1 of 1993 as amended and published in Extraordinary Gazette No. 772/22 dated 24th June 1993**, the submission and consideration of an Environmental Impact Assessment (EIA) is twofold; (1) an EIA is required for any activity that could have such adverse impacts when such activity takes place within a mile (buffer zone) from the radius of a National Park and (2) the inland surface mining of cumulative areas exceeding 10 hectares.
28. Petitioners further state that as per the provisions of the FFPO, no person or organization, whether private or State shall within a distance of one mile of the boundary of any **National Reserve**, carry out any development activity of any description whatsoever without obtaining the prior written approval of the Director-General, who may require an Initial Environmental Examination or an Environmental Impact Assessment.
29. Petitioners state that, however, no such Environmental Impact Assessment has been conducted regarding these trenches before the commencement of the said project, thus violating the provisions of the Part IV C of the National Environmental Act as amended, Fauna and Flora Protection Ordinance No. 02 of 1937 as amended and National Environmental (Procedure for approval of projects) Regulations No. 1 of 1993 as amended.
30. Petitioners state that the DWC appears to under the pretence that an Environmental Impact Assessment is not necessary for development activities within protected areas, under the FFPO, as they are the "project proponent" of the said project and the "project approving agency" for an EIA in such areas.
31. Petitioners state that, however, an EIA is not only a regulatory tool but, more importantly, it informs the "project proponent" of the environmental consequences of its development activities so that remedial actions can be taken.

32. Petitioners state that the **DWC has an ethical and a statutory obligation to ensure that any activities undertaken within protected areas have minimal or no adverse impacts on the very wildlife and wilderness that they are the custodians of, for and on behalf of the public of Sri Lanka and the present and future generations.**
33. Petitioners emphasize that it is of considerable surprise that the Director General of DWC, who was a member of the Presidential Committee appointed by His Excellency the President which formulated a National Action Plan for the mitigation of HEC, has in drastic contrast to the said Action Plan, is going ahead with an HEC mitigation measure that the Action Plan identifies as being ineffective.
34. Petitioners state that these laws, including the FFPO were formulated in an era when the public service was not so politically controlled as it is today and was administered by those dedicated to the mandate of their respective departments, unlike the officials who now seem to actively enable environmental wrongs to be perpetrated.
35. Petitioners state that said the action of the very State officials who are in charge of the protection of wildlife and wilderness is against the tenets of the Articles 12(1), 14(1)(g), 14(1)(h), 27(14) and 28(f) of the Constitution, the Public Trust Doctrine and the Rule of Law.

INVOLVEMENT OF PRIVATE CONTRACTORS

36. Petitioners state that the cash-strapped Wildlife Protection State Ministry had called on volunteers and businessmen to join its project to dig trenches.
37. Petitioners state that in the guise of Human-Elephant Conflict mitigation, trenches are being proposed to facilitate natural resource extraction from Protected Areas and soil and sand smuggling. It appears that private parties have been and will continue to be granted permission to excavate trenches on the boundaries and within the buffer zones of PAs, at their own cost, with permission to transport the excavated soil for sale.
38. Petitioners state that there is no transparent mechanism for selecting these private parties, and the public can only imagine who the beneficiaries of this windfall are. However, the Petitioners were not able to ascertain the names of the said contractors individually but

only was able to find out that those parties engaged in excavation are agents / employees of the 1st and 2nd Respondents.

39. Petitioners further state that these private contractors haphazardly excavate trenches in wildlife reserves and sanctuaries. According to the provisions of the FFPO, no resource can be taken outside any of the reserves. Furthermore, no permit has been obtained from the Geological Survey and Mines Bureau, and no royalty is being paid to the Geological Survey and Mines Bureau, thereby causing an imminent infringement and/or a continuous infringement and/or a violation the fundamental rights guaranteed under article 12(1) of the Petitioners, citizenry and the future generations and thus depriving the State of its income due to it, and it's citizens.
40. Petitioners further state that it is reported that large scale sand smuggling operation is being carried out under the guise of digging trenches for wild elephants in the Manampitiya and Karapola reserves on the boarder of the Floodplains National Park which is under the management of the Department of Wildlife conservation.
41. Petitioners state that excavation of trenches by private contractors close to Protected Areas pose a threat to the wild animals in such areas, as animals can be clandestinely smuggled or poached. Furthermore, there is a threat of mining for gems and excavation for treasures in the reserves in the guise of digging trenches.
42. Petitioners further state that the Conservator General of Forests by 2022.02.04 granted approval to the Department of Wildlife Conservation to dig trenches in areas under the management and control of the Department of Wildlife Conservation subjected to the conditions stated therein.
43. Petitioners state that digging of trenches in areas declared under the Forest Conservation including Reserve Forests, Conservation Forests and Other State Forests will cause irremediable damage to the forest and to the resources contained in such areas. This will also result in illegal felling of trees in such areas and etc.

A copy of the said letter dated 2022.02.04 is annexed hereto marked 'P7' and pleaded as part and parcel hereof.

44. Petitioners state that it is of great concern that the Department of Wildlife and other statutory Authorities in charge of biodiversity conservation are legitimizing the extraction of a natural resource, i.e. soil, from the buffer zones of PAs.
45. Petitioners annexed hereto several newspaper articles with regard to the aforementioned issue marked **"P8(a)"** to **"P8(g)"** and pleaded as part and parcel hereof.
46. Petitioners state that the duty reposed on the State and its agencies to protect the environment and the said duty is vested in the State and its agencies as the trustees of the public. Accordingly, the Respondents must uphold the Rule of Law and the Doctrine of Public Trust and not grant gracious favours to a privileged few at the detriment of the invaluable bio diversity and the natural resources of the country.
47. Hence, Petitioners state that the primary responsibility for the protection, preservation and conservation of the country's biological diversity and ecological heritage including the invaluable maritime and coastal ecosystems in the country for the well-being, development, and advancement of the people of Sri Lanka lies with the Government, of which the said Respondents are components and/or agents, as the guardian of the natural resources of Sri Lanka on behalf of the present and future generations of the people of Sri Lanka, as upheld by Their Lordships in **Watte Gedara Wijebanda Vs. Conservator General of Forest and Eight Others (SC Application No. 118/2004)**, in **Bulankulama and others Vs. Secretary, Ministry of Industrial Development and others (2000, 3 SLR 243)** and in **Ravindra Gunawardena Kariyawasam Vs. Central Environmental Authority and 10 Others (SC FR Application No. 141/2015) (Chunnakam Case)** and in **Centre for Environmental Justice (Guarantee) Ltd v Anura Satharasinghe, Conservator General and 8 Others (CA Writ 291/15)**.
48. The Petitioners state that the recognition of such responsibility by the Government of Sri Lanka is manifest by it becoming a contracting party and subsequently ratifying, or acceding to/ or becoming a signatory to a number of international conventions and declarations relating to environmental conservation such as:

- a. *Stockholm Declaration on Human Environment, 1972*
- b. *Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972*
- c. *Rio Convention on Biological Diversity, 1992*
- d. *Rio Declaration on Environment and Development, 1992*
- e. *Paris Declaration on the Responsibilities of Present Generation towards Future Generations, 1997*
- f. *Johannesburg Declaration on Sustainable Development, 2002.*

49. Petitioners state that the constitution in Article 27 (14) of the Directive Principles of State Policy enjoins the state to protect, preserve and improve the environment. Article 28 refers to the Fundamental duty upon every person in Sri Lanka to protect nature and conserve its riches. Furthermore, Article 28(f) refers to the Fundamental Duty upon every person in Sri Lanka to protect nature and conserve its riches. The Respondents which are agencies of the State are to be guided by these Directive Principles and Fundamental Duties when carrying out their statutory and regulatory duties.

50. Accordingly, the Petitioners state that the aforementioned actions and/or omissions of the above-named Respondents are inconsistent with and/or repugnant to the Directive Principles of State Policy and Fundamental Duties, particularly those enunciated in Articles 27(2)(a), 27(14), 28(c), 28 (e) and 28 (f) of the Constitution. According to Article 27(1), the Directive Principles of State Policy are the guiding principles for the legislature and executive in the enactment of laws and the governance of the country. They are in the nature of an instrument of instructions, which both the legislature and executive must respect and follow.

51. It is respectfully submitted further that the organs of the government in which the said Respondents are component and/or an agent are the guardians to whom the people have committed the care and preservation of natural resources, including the biodiversity of the country and thus, in making the said order and by the said inaction and/or failure to act and/or neglect to perform duty the said Respondents has failed and/or neglected to perform his duty in the said capacity of the 'Public Guardian' as the said concept is judicially formulated.

52. Petitioners state that power exercised by the Respondents contrary to the Public Trust Doctrine would be an abuse of such power and in contravention of the Rule of Law.

53. Petitioners further state that the said acts/ omissions/ failures of the Respondents are in violation and/or derogation of the **Concepts and Principles of Environmental Law** enshrined in the international conventions and declarations, particularly the **Concepts of Sustainable Development** and **Inter-Generational Equity, Principle of Precautionary Action,** and **Doctrine of Public Trust** which as has been judicially determined have become part of the domestic law of Sri Lanka.
54. Petitioners state that although a number of mitigation activities for the HEC have been recommended and proposed in the National Action Plan, the Respondents have opted to implement the option which the said Action Plan has identified as ineffective instead of the practical and successful methods recommended therein.
55. Petitioners state that the Respondents as custodians of wildlife, wilderness and natural resources should exercise that power in trust for the present and the future generations and wherein the purported exercise of such power a benefit or advantage is wrongfully secured, there is an entitlement for the Petitioners in the public interest to seek a declaration from Your Lordships' Court as to the infringement and/ or the continuous infringement of the fundamental right to equality before the law.
56. In view of the aforesaid circumstances, the Petitioners state that there is a breach of Rule of Law of the Republic of Sri Lanka, a violation and/or a continuous violation of the Public Trust reposed on the said Respondents which they have undertaken to preserve in terms of Constitution and a violation and/or a continuous violation of the fundamental rights guaranteed to the Petitioners, the citizenry of the country and the future generations under Article 12(1), 14(1)(g), 14(1)(h) of the Constitution by the actions and/or omissions and/ or failure of any one or more or all of the Respondents as morefully described hereinbefore.
57. In the said circumstances, it has become necessary for the Petitioners to seek the indulgence of Your Lordships' Court to suspend the digging of trenches owing to its environmental impact and danger to wild animals until the final determination of this application.
58. Therefore, the Petitioners state that in these circumstances, grave, irremediable, permanent and irreparable loss, detriment and prejudice will be caused to the environment, to the wildlife and the current and future generations of the citizenry of the Republic of Sri Lanka

and this application would be rendered infructuous and nugatory, unless Your Lordships' Court be pleased to Grant & Issue Interim Order prayed for as a matter of urgency and pressing necessity.

59. The Petitioners state given the paucity of information and access thereto, and also other exigencies that they were confronted with in preparing these papers to be instituted in Your Lordships' Court, the Petitioners begs the indulgence of Your Lordships' Court to reserve their right to:

- a) amend the Petition and/or add any person/persons as parties to this application in the event of any future material revealing their complicity in respect of the actions complained of in the preceding paragraphs;
- b) tender any such other further documents the Petitioners have called for, in exercising its rights in terms of the Right to Information Act No. 12 of 2016, if and when released by the relevant authorities and/or as and when the Petitioners collects such documents; and
- c) to tender any such other further Affidavits and documents as may be required and/or necessary.

60. The Petitioners state that they have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

61. An affidavit of the 2nd Petitioner is appended hereto in support of the averments stated herein.

WHEREFORE the Petitioners respectfully prays that Your Lordships' Court be pleased to:

- a) Grant leave to proceed to this application and issue notice on the Respondents;
- b) Declare that the Fundamental Rights of the Petitioners as well as the rights of the entire citizenry and future generations guaranteed to them under Articles 12(1), 14(1)(g) and 14(1)(h) of the Constitution are in imminent danger of being infringed and/or being infringed and/or are being continuously violated by any one or more or all of the Respondents;

- c) Declare that fundamental rights of the farmer communities of the country guaranteed to them under Article 14(1)(g) are in imminent danger of being infringed and/or being infringed and/or are being continuously violated by any one or more or all of the Respondents;
- d) Declare that the failure of any one or more or all of the Respondents to give effect to the provisions of the Mines and Minerals Act No. 33 of 1992 as amended and to collect royalties or other dues for excavation constitutes a violation of the Fundamental Rights of the Petitioners as well as the rights of the entire citizenry and future generations guaranteed to them under Articles 12(1) of the Constitution;
- e) Declare that the failure of any one or more or all of the Respondents to comply to the provisions of the Part IV C of the National Environmental Act as amended, Fauna and Flora Protection Ordinance No. 02 of 1937 as amended and National Environmental (Procedure for approval of projects) Regulations No. 1 of 1993 as amended and published in Extraordinary Gazette No. 772/22 dated 24th June 1993 constitutes a violation of the Fundamental Rights of the Petitioners as well as the rights of the entire citizenry and future generations guaranteed to them under Articles 12(1) of the Constitution;
- f) Grant and issue an interim order staying the operation of the said project by the 1st and the 2nd Respondents, their agents, servants and permitted assignees, until the final hearing and determination of this application by Your Lordships' Court;
- g) To direct the 1st Respondent, its agents, servants and/or the permitted persons to restore the areas where elephant trenches are dug back into their original state in terms of the provisions of the Mines and Minerals Act as amended.
- h) To direct any one or more of the Respondents, their agents, servants or their permitted assignees to pay compensation to set off the irreversible damage and harm caused to the environment in applying the Polluters-Pays Principle;
- i) To direct the Respondents to implement suitable and practical measures recommended in the National Action Plan 2020 (marked "P4") to mitigate the Human-Elephant Conflict;

- j) To direct the 5th Respondent and the Hon. Attorney General to prosecute all State Officials who were involved in this illegal and unlawful project, in terms of Sections of 112 and 289 of the Penal Code and other relevant laws;
- k) Grant such relief/or issue such directions as may deemed just and equitable by Your Lordships' Court under and in terms of Article 126(4) of the Constitution, taking into account all the facts and circumstances enumerated by the Petitioners in this Application Grant Costs; and
- l) Grant such other and further reliefs that Your Lordships' Court shall seem meet.

ATTORNEY-AT-LAW FOR THE PETITIONERS

Settled by:

Savanthi D. Ponnampereuma

Ravindranath Dabare, Esq.

Attorneys-at-Law